

## Procedures for Responding to Freedom of Information Act Requests in EPA Region 2

### 1. PURPOSE

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA Region 2. They address statutory, regulatory, policy, procedural and processing requirements to be followed by all regional employees.

### 2. SCOPE AND APPLICABILITY

The scope of these procedures covers work performed by EPA Region 2 employees, grantees, contractors, and interns in support of FOIA administration activities.

### 3. AUDIENCE

The audience for these procedures includes all EPA Region 2 programs, employees, officials, contractors or grantees and others operating on behalf of the EPA Region 2.

### 4. BACKGROUND

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain access to federal agency records unless such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. There are nine FOIA exemptions:

- 1) Classified national defense and foreign relations information.
- 2) Internal agency rules and practices.
- 3) Information that is prohibited from disclosure by another federal
- 4) Trade secrets and other confidential business information.
- 5) Inter-agency or intra-agency communications that are protected by legal privileges.
- 6) Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information).
- 7) Information compiled for law enforcement purposes, to the extent that the production of those records:

- Could reasonably be expected to interfere with enforcement proceedings.
  - Would deprive a person of a right to a fair trial or an impartial adjudication.
  - Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
  - Could reasonably be expected to disclose the identity of a confidential source.
  - Would disclose techniques and procedures for law enforcement, investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions.
  - Could reasonably be expected to endanger the life or physical safety of any individual.
- 8) Information relating to the supervision of financial institutions.
  - 9) Geological information on wells.

The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time to respond from ten working days to twenty working days. The Open Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and a FOIA Public Liaison to assist in reducing delays, increasing transparency and resolving disputes. It also established the Office of Government Information Services within the National Archives and Records Administration to provide mediation services for resolution of disputes between persons making FOIA requests and administrative agencies as well as to provide input and guidance on the effective administration of the FOIA across federal agencies.

The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public. To improve its FOIA management and processes, the EPA deployed FOIAonline, a shared service, as its new FOIA management system in October 2012. FOIAonline automates core processing and administrative activities. All FOIA requests received at the EPA Region 2 offices will be managed throughout their lifecycle in FOIAonline. All records provided in response to a FOIA request will be entered into FOIAonline for public viewing and searching unless the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies (e.g., contains Confidential Business Information that is only appropriate to release to the requester/owner of the CBI and is not appropriate for public release). These exceptions will be reviewed on a case by case basis by the EPA Headquarters FOIA Officer. A copy of the exception decision will be maintained in the system. If records provided in response to a request are not entered into

FOIAonline because of these conditions, a placeholder document must be uploaded with contact information for obtaining a copy of the response. The organizational unit that has responsibility for responding to the request (known throughout this document as the Action Office) must maintain the records and make them readily available for responding to future requests.

This document does not provide "how-to" instructions for using FOIAonline, but does reference features of the system that help accomplish certain FOIA tasks outlined in this procedure. The Agency sponsors FOIAonline trainings for "FOIA responders" which Region 2 FOIA Specialist is responsible for coordinating. FOIAonline also offers anytime training resources which are available at <https://foiaonline.regulations.gov/foia/action/public/home>.

These procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, the EPA's implementing regulations, and open government and transparency policies.

These procedures will be supplemented by role-based and general awareness trainings for the audience identified under Section 3, above.

## 5. AUTHORITY

Freedom of Information Act, 5 U.S.C. § 552.

EPA's FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.

CIO Policy EPA Classification Number CIO 2157.1

## 6. PROCEDURES

EPA Region 2 receives requests for information in a number of ways. A request may be sent through the Agency's FOIAonline portal, by email, by fax or postal mail. The Agency's goal is to have its FOIA business processes be primarily conducted in FOIAonline and this SOP will foster movement in that direction. Requests received by any other regional component are considered misdirected and should be immediately forwarded to the regional FOIA Specialist located in the Public Affairs Division. FOIA allows agencies up to 10 working days to route a misdirected request before the 20 working day period to respond begins. The clock will begin on the 11<sup>th</sup> working day of receipt therefore, a prompt transfer is extremely important. The FOIA process will officially begin when the request is received by this regional component. FOIA requests do not need to cite FOIA; if the request can be answered by release of Agency records which require a search and/or review, it qualifies as a request under FOIA.

### INITIATING THE PROCESS

As noted in item 6, the FOIA process officially begins when a request is received in the Public Affairs Division either forwarded by Agency staffers or sent by the public. The FOIA Specialist ensures the FOIA request is entered into FOIAonline if not submitted thru the portal by requester.

It is important to note, the bulk of Region 2 FOIAs are from consultants and organizations seeking environmental information about specific properties related to real estate transactions. Lead assignment of these types of requests is made to the Public Affairs Division ("Action Office") with collaboration via a task created to the appropriate program office(s), ("Contributing Office"), thru FOIA online to their respective FOIA Coordinator. Following is the process involving these types of routine requests:

Step 1 - RECEIVE, REVIEW, AND ACKNOWLEDGE INCOMING REQUESTS. The FOIA Specialist receiving the request will verify that the request: 1) is in the appropriate regional office 2) is in writing; 3) provides all pertinent contact information including email - if email is excluded, FOIA Specialist will contact requester; 4) asks for Agency records; 5) reasonably describes the records sought (A description is sufficient if it enables an EPA employee familiar with the subject area to locate the record with a reasonable amount of effort, hence, perfected); and 6) has the statutory minimum payment commitment in accordance with Agency regulations found at 40 CFR 2.102(d), in the absence of a fee waiver request (if a fee waiver and/or expedited treatment is sought, Steps 3 and 4 of the National FOIA Program Procedures Document should be followed).

Improper FOIA requests include:

- o Requests that do not reasonably describe the records sought;
- o Requests that pose questions, rather than seek documents.

FOIA does not require EPA to:

- o Create new records or future records in response to a request;
- o Re-create records which were properly disposed of;
- o Produce records the Agency retains no control over;
- o Re-provide records which EPA already makes available to the public;  
or
- o Produce purely personal records.

If an improper FOIA request is received by the regional FOIA Specialist, appropriate action should be taken to bring the request to perfected status.

If the requestor provided an email address, FOIAonline will automatically send a receipt to the requester that includes the tracking number and submission date for all requests processed in the system. If the FOIA Specialist is unable to obtain requester's email address, postal mail will be used to send receipt acknowledgment letter. The acknowledgement letter will provide the tracking number and the date the request was received by EPA. Requests received after 5 pm EST or on weekends or holidays are not considered received until the next business day.

Step 2 - DETERMINING THE FEE CATEGORY. The regional FOIA Specialist will determine how requesters will be charged processing fees based on their fee category. The fee categories under FOIA are: (1) Commercial Use, (2) Educational Institution or Non-Commercial Scientific Institution, (3) Representative of the News Media and (4) Other. See also 40 CFR 2.107.

For the most part, these types of routine requests are from commercial institutions, therefore, please refer to the section ESTIMATE PROCESSING FEES for guidance.

Step 3 - ASSIGN THE REQUEST TO THE ACTION OFFICE. The FOIA Specialist, after determining fee category, confirming the request is perfected, which initiates the 20 working day period, will make lead assignment to the "action office" and create task(s) to the appropriate "contributing office(s)" for search of their files and subsequent input. This input can consist of 1) uploading responsive materials, hence, records located; 2) simply closing their task with a no records located determination; or, 3) entering a disposition of "other" if a referral is involved or special comments have been created for purposes of inclusion in final reply. Note that a selection by the contributing office of "other", raises a flag to the lead responder, the FOIA Specialist, that relevant comments have been created for inclusion in the regional final response. FOIA responders within contributing offices, should all have FOIA online accounts set up, as everything must be documented in the system as per policy, particularly, if they are considered to be primary contacts for environmental audits requests.

Step 4 - PREPARE RESPONSE LETTER. Once the action office determines all tasks have been completed by contributing offices, the close out process begins. The action office will begin the FOIA online close out process by selecting the appropriate EPA determination, choosing appropriate template from the system with standard language, if suitable, and obtain necessary reviewer approvals equivalent to concurrence. All response letters must include: (1) the FOIA tracking number and (2) appeal language, as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:

- No records were found;
- The response time has exceeded the statutory authority or documented extensions;
- The request for expedited processing was denied;
- The request for a fee waiver was denied;
- The requestor believes some records or portions of records were improperly withheld;
- The requestor believes the search was inadequate; or

- The requestor believes the fee category in which they were placed is incorrect.

After reviewer approval, primarily done by managerial staff, ranging from Branch Chiefs to Deputy Division Director, the case file is returned electronically to the regional FOIA Specialist, who is responsible for mailing final determination package to requester. This concludes the procedures for routine environmental audit inquiries within EPA Region 2.

**The FOIA Specialist in the Public Affairs Division also receives FOIA requests related to programmatic topics, cases, sets of correspondence or data which are then assigned to the appropriate program divisions via their FOIA Coordinator. Following are the procedures to follow with respect to these types of requests:**

ASSIGN THE REQUEST TO THE ACTION OFFICE - The Regional FOIA Specialist will assign the request in FOIA online to the FOIA Coordinator in the program office believed to most likely house the responsive records. In most cases, the FOIA Coordinator in the action office consults with a program branch manager to determine which staffer(s) within their division will be contributing toward the final response. If assignee(s) are part of the "frequent FOIA responder community", hence online account holders, they will receive a FOIA online task for action from their FOIA Coordinator. These assignees will be responsible for uploading responsive records and closing out their respective task online. In some cases, individuals who do not hold FOIA online accounts will receive a PDF screenshot of the online submittal along with any supporting documentation necessary for the adequate processing of the request. These "offline" staffers should transfer to their FOIA Coordinator, whenever possible, the electronic version of responsive records for uploading purposes. The FOIA Coordinator will begin the online close out process for Public Affairs Division review and online approval.

Requests for information related to Superfund sites go directly to the Superfund Division's FOIA Coordinator. The responses are assigned to the project managers for the sites and the responsive records are collected by them. These responses are then collected by the divisional FOIA Coordinator and uploaded into the system also for Public Affairs Division review and online approval.

Either way, subject matter experts assigned FOIA responses may determine that a legal matter is involved or that an additional review by an attorney is warranted. In these instances, the staff person will refer the response to a case attorney in the region's Office of Regional Counsel. If this occurs, subject matter expert should notify both the program FOIA Coordinator and the regional FOIA Specialist for proper online recording. The regional FOIA

Specialist tracks progress on these requests through FOIAonline and sends reminders about deadlines.

Often, we may receive a multi-media FOIA request that will involve input from various programs ("Contributing Office"). In this instance and similar to the "routine real estate FOIA response process", the regional FOIA Specialist in the Public Affairs Division will retain lead action ("Action Office"), for purposes of one Agency response. The FOIA Specialist will assign each Contributing Office's FOIA Coordinator a task in FOIAonline for them to provide responsive records. These Contributing Offices will follow the above mentioned steps in supplying responsive records.

#### PROCESSING THE REQUEST IN CONTRIBUTING OFFICES

The FOIA Coordinator who receives the assignment from the regional FOIA Specialist, will after consultation with branch manager if needed, determine who the appropriate branch, section, team or regional individual within their division will be responsible for gathering responsive records. Often times at the contributing office level, the custodian of the records will need to contact requester in connection with the processing of their request. All communications, including verbal conversations with the requester, will be documented for the official record and entered into FOIAonline. Communications may include discussion of scope, deadlines, or other issues. If the responder is an employee who does not have an online account, the FOIA Coordinator or the regional FOIA Specialist should be contacted so that the communication can be entered in FOIAonline.

NOTE: For large, complex FOIA requests, it is suggested that the Contributing Office convene meetings with all interested Agency parties in order to clarify responsibilities, methods to be used for collection, and similar issues. Those meetings should include programmatic experts, Records Liaison Officers, information technology specialists, and legal counsel, as appropriate.

DETERMINE SEARCH PARAMETERS. The responsible office will determine the cut-off date for records subject to the request. Under the EPA's regulations (40 C.F.R. § 2.103 (a)) for determining what records are within the scope of the request, the Action Office will usually include only those records in its possession as of the date the request was received by the FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the Action Office will inform the requester of that date.

The request will also be reviewed to determine the subject matter of the records the requester is seeking. If it is deemed necessary for the person processing the FOIA to obtain clarification or additional information from the requester, the time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that the EPA has to respond to the request. The FOIA permits the Agency to "stop the clock" one time during the first 20 days after receipt, to seek information and clarification from the requester. Although the requester may be contacted as

many times as needed to clarify the scope of the request, the clock may only be stopped once. Once the clock has been stopped, it should not be restarted until the information or clarification is provided. All communications must be documented for the official record and entered into FOIAonline, and the deadlines adjusted in the system, as appropriate.

DETERMINE IF ADDITIONAL RESPONSIVE RECORDS ARE IN OTHER REGIONAL OFFICES. When additional responsive records are determined to be located in other program offices, or the request is incorrectly assigned, the appropriate FOIA personnel should be notified within two working days of receiving the assignment. Offices should return misdirected requests to the regional FOIA Specialist or to their program FOIA Coordinator for reassignment.

ESTIMATE PROCESSING FEES. The EPA's FOIA regulations require an assurance of payment from the requester if fees are expected to exceed \$25.00 or an amount specified by the requestor. Unless a waiver of fees has been granted by the Agency FOIA Officer, the Action Office will estimate the processing fee which will be charged as specified in 40 C.F.R. § 2.107. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. The EPA's FOIA Regulations (40 C.F.R. § 2.107(j)) also define circumstances where it may be appropriate to require advance payment of the estimated fees, if the fees are expected to exceed \$250.

Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. Fees are calculated as follows:

Type of Staff Charge Per Quarter Hour

Clerical Staff \$4.00 per ¼ hr

Professional Staff \$7.00 per ¼ hr

Managerial Staff \$10.25 per ¼ hr

Type of Requester Fee Category to be Charged			
	Search	Review	Duplication
Commercial	Yes	Yes	Yes
Educational	No	No	Yes (100 pages free)*
Non-commercial			
Scientific	No	No	Yes (100 pages free)*
News Media	No	No	Yes (100 pages free)*



All Others	Yes	No	Yes (100 pages free)*
	(first 2 hours free*)		

\*Fees shaded in grey above cannot be charged if the Agency fails to comply with time limits for response.

DETERMINE RESPONSE TIME. The FOIA requires agencies to provide a substantive response within 20 working days. In such instances when the responding office determines the response cannot be completed within 20 working-days, the EPA may extend the due date if "unusual circumstances," as defined by the FOIA, apply.

An "unusual circumstance" exists when there is: (1) a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and (3) a need for consultation, which will be conducted with all practicable speed, with another agency or among two or more components of the EPA having a substantial interest in the determination of the request.

If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the responding office must notify the regional FOIA Specialist, within the 20 working day time limit, so that requester can be notified in writing that unusual circumstances exist and provide the new due date. When the unusual circumstances result in a need to extend the due date for more than 10 working days, the appropriate subject matter expert, within the 20 working days, should contact the requester and provide them with an opportunity to either (a) modify the request so that it may be processed within the 10 working day extension or (b) arrange an alternative time period for processing the original or modified request.

All communications should be provided to the regional FOIA Specialist for purposes of entering into FOIAonline.

If unusual circumstances do not exist, or if the due date has already been extended and additional time is needed to complete the response, the responding office should seek a reasonable extension from the requester. To aid the requester, offices will provide the requester the contact information for the EPA FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and the EPA. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible. The requester may file an administrative appeal or may pursue litigation. For instances where the FOIA requester is the prevailing party of a litigation case and the EPA is required to pay legal fees, please refer to Office of the Chief Financial Officer's FOIA Fee Policy, RMDS 2540-04-P2.

Program offices should contact regional FOIA Specialist in connection with any and all requests for extensions or expected completion dates. All communications must be documented for the official record and entered into FOIAonline.

COLLECT AND REVIEW RECORDS. The Action Office and each Contributing Office is responsible for identifying, collecting and reviewing records within the scope of the request. This includes the responsibility for consultation and referral with other federal agencies. Contributing Offices are also responsible for coordinating responsive activities with the Action Office. The Action Office and each Contributing Office should also assure that protected information has been redacted from records before they are released.

The Action Office and Contributing Offices will: 1) ensure that redacted information cannot be read through photocopied records; 2) remove "hidden" metadata as appropriate (e.g. Microsoft Word document properties); and 3) annotate records with the applicable FOIA exemption(s) at the location of the redacted information. A copy of both the original and redacted record will be stored in FOIAonline, unless subject to special handling requirements (e.g., large volume) or policies. Exceptions to this storage requirement are approved on a case by case basis by the Agency FOIA Officer. FOIAonline allows FOIA professionals to put records in the system that are not released to the public. This protects records that have been withheld. If records provided in response to a request are not entered into FOIAonline because of special handling requirements or policies, or because the volume of files make it impractical to upload the complete response, a placeholder document must be uploaded with contact information for how to obtain a copy of the response that the responding office will maintain and make readily available.

NOTE: Only records that have been: 1) marked published and 2) approved for release are available to the public in FOIAonline.

DETERMINE WHICH RECORDS (OR PORTIONS) MAY BE RELEASED. After thorough review, responding offices will prepare to release responsive, non-exempt records or portions of records.

All records released or being withheld in total in response to a FOIA request must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request. Action Offices may consult with their Office of Regional Counsel (ORC) for questions regarding withholding of records under a FOIA exemption. If a discretionary FOIA exemption (Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9) is implicated, Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.

Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

- a) Release in Full. The record, in its entirety, may be released to the requester.
- b) Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.
- c) Withhold in Full. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.
- d) No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: This form is not sent to the requester.
- e) Confidential Business Information (CBI). For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 C.F.R. § 2.204 must be followed.
- f) Glomar Response. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The response letter will inform the requester that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA." The Action Office must obtain approval from ORC prior to issuing a Glomar response.

PREPARE RESPONSE LETTER. The Action Office will prepare the response letter using standard language, if suitable, and obtain necessary concurrences. In addition, response letters that withhold Agency records, in total or in part, are required to identify the:

- Records withheld individually or by category of similar documents if voluminous;
- Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and
- Authorizing official by name and title (see ROLES AND RESPONSIBILITIES for list of Authorized Officials).

FINALIZE PROCESSING FEES. The Action Office will inform the requesters in the response letter if fees for processing the request are not billable (i.e., equal to or less than \$14.00). If the processing fees are billable (i.e., greater than \$14.00), FOIAonline will generate the invoice.

NOTE: The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.

OBTAIN APPROVAL FROM AN AUTHORIZED OFFICIAL TO RELEASE OR WITHHOLD RECORDS. See EPA Freedom of Information Delegation of Authority, Section 1-30.

NOTE: Initial determinations (both release and withholding determinations) may be re-delegated only to persons occupying positions not lower than division director or equivalent.

RESPOND TO REQUEST. The Action Office will provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester will be notified via email that the responsive records are available in FOIAonline. Otherwise, the response package will be provided via postal mail.

The response letter must include a description of the information withheld either by category and volume, or by a list. In all cases the response letter must also include the standard administrative appeal language.

FINALIZE ACTIONS. The Action Office will ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response will be maintained in FOIAonline, including all responsive records. Once published, these records become available for public searching and viewing.

If the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies, the Agency FOIA Officer will consider granting an exception to the requirement to load the records into FOIAonline. Reviews are made on a case by case basis. A copy of the decision by the Agency FOIA Officer will be maintained in the system. If the exception is granted, a placeholder document must be uploaded in FOIAonline with contact information for obtaining a copy of the responsive records. The Action Office that has responsibility for responding to the request must maintain the records according to applicable record schedules and make them readily available for responding to future requests.

The Action Office will close the request in FOIAonline.

#### RESOURCES

- <http://www.epa.gov/FOIA/FOIAregs.htm>
- <http://www.justice.gov/oip/amended-FOIA-redlined.pdf>
- <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171-p-01.pdf>
- <http://www.archives.gov/about/organization/summary/ogis.html>
- Delegation of Authority Section 1-30
- FOIAonline Guidance
- EPA Region 2 FOIA Business Process Document 8/2013

#### ROLES AND RESPONSIBILITIES

Action Office - The organizational unit that maintains the majority of records responsive to a FOIA request.

Agency FOIA Officer - The Agency FOIA Officer is the program manager for the National FOIA program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to agency employees and other individuals covered under Section 3 of these procedures. The Agency FOIA Officer is located in the Office of Environmental Information at EPA Headquarters.

Authorized Officials - Regional Administrator (or their appropriate designee), Regional Counsel, Division Directors are authorized to issue initial determinations to release or withhold records in response to FOIA requests.

Contributing Office - Organizational units that possess responsive records in addition to the Action Office.

Chief FOIA Officer - The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program. NOTE: This role is different from that of the Agency FOIA Officer above.

FOIA Coordinator - FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate component within their division; track FOIA requests within their program for timeliness; and provides guidance to program personnel, including overdue reports, in collaboration with the Regional FOIA Specialist. Each regional program FOIA Coordinator works under the general direction of the Regional FOIA Specialist.

FOIA Offices - The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

FOIA Public Liaison - The FOIA Public Liaison is the EPA contact point for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Managers and Supervisors - EPA managers and supervisors oversee FOIA responders/SME to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve FOIA responses before release.

Office of Regional Counsel (ORC) - ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the

Regional FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

Regional FOIA Specialist/Primary Coordinator - The Regional FOIA Specialist is the program manager for the regional FOIA program. The Regional FOIA Specialist coordinates and oversees the regional FOIA administration responsibilities; develops regional FOIA procedures; provides processing guidance to regional employees; coordinates with Agency FOIA Officer on training opportunities for regional employees and other individuals covered under Section 3 of these procedures. Assigns requests to the appropriate Action Office or Contributing Office within the region; track FOIA requests; lead responder on multi-action requests; coordinates with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; develops overdue reports; compiles data for contribution towards the annual FOIA report; and monitors the quality and timeliness of responses in the regions. Regional FOIA Specialist works under the general direction of the Agency FOIA Officer. The Regional FOIA Specialist is located in the Public Affairs Division in Region 2.

Subject Matter Experts - Subject matter experts identify and locate records requested under FOIA. These individuals are located in all EPA organizations and include all professional disciplines. If permitted under the applicable delegation and after obtaining any necessary concurrences, the subject matter experts may respond to requests directly or provide the responsive records to the FOIA Coordinator or the FOIA Specialist who facilitates the response for the Region. They must, however, follow the review process prescribed in this procedure.

#### DEFINITIONS

Administrative Appeal - An independent review of the initial determination made in response to a FOIA request. Requestors who are dissatisfied with the response made on their initial request have a statutory right under 40 C.F.R. § 2.104(j) to appeal the initial determination to an office in the Agency which will conduct an independent review. (NOTE: OGC is responsible for managing all FOIA appeals at the EPA with the exception of appeals that involve FOIA requests to the OIG or FOIA requests where OGC is the Action Office on the initial response. OIG handles its own appeals. The Office of the Administrator processes appeals where the OGC is the Action Office on the initial response.)

Case - All records pertaining to a FOIA request.

Commercial Use - A type of request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation.

Consultation - When an agency locates a record or a record that contains information provided by or of interest to another agency, it will ask for the views of that other agency on the disclosability of the records before any final determination is made. This process is called a "consultation." (See also "referral.")

Confidential Business Information - Trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.

Educational Institution - A preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

Existing records - Agency records that exist as of the date a FOIA request is received by the EPA.

Expedited Processing - The processing of a FOIA request out of the order in which it was received and prioritized over other pending FOIA requests. The standards for expedited processing are set out in the FOIA and in the regulations of each federal agency.

Fee Categories - Categories under FOIA that determine assessments of fees to requesters.

Requesters fall into one of five fee categories: (1) commercial requesters; (2) educational; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all other requesters (i.e., requesters who do not fall into any of the other four categories).

Fee Waiver - A request made to an agency to waive any applicable fees for its processing of a FOIA request. Fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for a fee waiver are evaluated on a case-by-case basis.

FOIAonline - The EPA's FOIA tracking and management system.

FOIA Exemptions - Contained at 5 U.S.C. § 552(b) (1)-(9). See <http://intranet.epa.gov/foia/exemptions.html> or the box on page 2 of these procedures.



FOIA Time Limits - The time period in the FOIA statute for an agency to respond to a FOIA request (ordinarily twenty working days from the day a FOIA request is received and logged in by the appropriate FOIA Office).

Freedom of Information Act (FOIA) - The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

Full Denial - An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located. A denial response must be signed by an Authorized Official.

Full Grant - An agency decision to disclose all records in full in response to a FOIA request.

Glomar Response - An agency's express refusal to confirm or deny the existence or nonexistence of records responsive to a FOIA request.

Initial Request - The request submitted by an individual to a federal agency for access to agency records on any topic. A FOIA request can generally be made by any person, to any federal agency, and only requires that requesters reasonably describe the records they are seeking and comply with agency regulations for making such requests.

Media Requester - Any person making a FOIA request who actively gathers news for an entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use.

Non-Commercial Scientific Institution - An institution that is not operated on a commercial basis but operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

No Records Response - A FOIA request for which no responsive records were located.

Partial Grant/Partial Denial - An agency decision to disclose records or portions of records while withholding other records or portions of records that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

Pending Request or Administrative Appeal - A request or administrative appeal for which an agency has not taken final action in all respects.

Perfect Request - A request for records that clearly describes the records sought and the procedures that will be followed to develop a response.

Processed Request or Processed Administrative Appeal - A request or administrative appeal for which an agency has taken final action in all respects.

Records - Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes all tangible documentations of information regardless of whether they are records under 44 U.S.C.

§3301. (NOTE: This is a broader definition than that used by the EPA records program and records schedules.)

Redact - The act of removing exempt information from responsive documents either manually or utilizing redaction software.

Referral - When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. This process is called a "referral." (See also "consultation.")

Requester - Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not processed under these procedures.

Responsive Record - A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

Unusual Circumstances - When there is: (1) a need to search and collect documents from organizations separate from the organization processing the request; (2) a need to search and collect a large volume of records; or (3) a need to consult with another agency (or a separate subdivision of the same agency) having a substantial subject-matter interest in the request.

#### WAIVERS

No waivers will be accepted from the requirements of this procedure.

#### ADDITIONAL INFORMATION

This document is not intended to create any rights or privileges for the public, or obligations on the part of EPA.